IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : Crl. Misc. No. 8831-M of 2007
Date of Decision : October 11, 2007.

Ram Mehar .... Petitioner

Vs.

State of Haryana and others .... Respondents

CORAM : HON'BLE MR. JUSTICE L. N. MITTAL

* * *

Present : Mr.R.N.Lohan, Advocate
for the petitioner.

Mr.Ajay Ghangas, DAG, Haryana

* * *

L.N.MITTAL, J. (Oral) :

Ram Mehar has filed the instant petition under Section 482 Cr.P.C. for handing over the investigation in case FIR No.110 dated 06.04.2005, under Section 364/34 IPC, registered at Police Station Gharaunda, to Central Bureau of Investigation.

Petitioner's son Jai Pal @ Karmu was employed as Driver of Truck No.HR-46-B-4554, owned by one Sumit. Satya Narain @ Satyan (maternal uncle of Jai Pal @ Karmu in relationship) was cleaner of the aforesaid truck. On 07.07.2004, the truck started from Rohtak at about 05:00 P.M. for Himachal Pradesh via Gohana, Panipat and Karnal. Sumit and Satyan were also in the truck besides Jai Pal. Another truck also joined

them on the way at Gohana. At about 08:00 P.M., Jai Pal stopped the truck at a Petrol Pump, about two kilometers from Gharaunda, and got filled diesel in the fuel tank of the truck. The other truck also reached there. Jai Pal had altercation with salesman of the Petrol Pump. Employees of the Petrol Pump started beating Jai Pal. Ram Parshad and his companions, who also reached there in the meanwhile, also started bearing Jai Pal finding fault with him. A policeman, who was there, also started causing injuries to Jai Pal. That policeman also summoned other police officials and thereupon 5-6 policemen came in a jeep. All the police officials gave merciless beatings to Jai Pal. Owner and Cleaner of the truck were kept confined in a cabin at the Petrol Pump by the police officials. When after some time, they came out of cabin, Ram Parshad told them that Jai Pal had fled away, but according to the Cleaner Satyan, Jai Pal was even unable to sit on account of merciless beatings and therefore was lying down and was pleading for mercy with folded hands. He was even unable to stand. On the basis of these allegations, the petitioner lodged the aforesaid FIR (Annexure P-1), also mentioning therein that Ram Parshad and his companions, police officials and Petrol Pump employees have caused death of Jai Pal. Names of some police officials have also been mentioned.

Investigation into the FIR has been conducted by Dalbir Singh, Deputy Superintendent of Police, State Crime Branch, Haryana, Madhuban, District Karnal, who has submitted untraced report (Annexure – B). According to this report, Satya Narain @ Satyan, Cleaner of the truck, and Om Parkash and Wazir, who were also present at the place of occurrence, have given affidavits that Petrol Pump employees had beaten Jai Pal @ Karmu and the police official on duty tried to intervene but Karmu tore the uniform of the police official who telephonically informed the police station and after some time, two police officials came there on a motorcycle. The

police officials asked the Cleaner Satyan to call owner Sumit who had gone inside of the Petrol Pump to pay for the fuel. Satyan went inside to call Sumit while Karmu was still outside there. When Satyan came back, Karmu fled away from there. Satyan did not know where he had gone. Other statements were also recorded during investigation and it has been concluded that Karmu has not been traced out despite efforts. Even lie-detection test was held. Search for Karmu was made at different places but proved futile. No charge was proved against anybody. Accordingly, untraced report was prepared.

According to affidavits of Satyan, Om Parkash and Wazir, Karmu had fled away from the Petrol Pump whereas the police officials were still there. In view thereof, it has been concluded that the police officials could not have taken away Jai Pal @ Karmu with them. It is not even the petitioner's case that Karmu had died at the spot i.e. at the Petrol Pump. There is no material on record to substantiate the petitioner's contention that Karmu had been taken away by the police officials or that he was killed by the police officials and Petrol Pump employees and Ram Parshad and his companions. There is only material to show that Karmu was beaten by the Petrol Pump employees. However, there is not even any material to depict that Karmu had been beaten so mercilessly that he was unable to stand or walk. Satyan – Cleaner, the best witness in this case, also does not substantiate the contention of the petitioner, although Satyan is said to be maternal uncle in relationship of Jai Pal @ Karmu – son of the petitioner.

Learned counsel for the petitioner emphasizes that even FIR was registered after nine months of the occurrence and that also, on the intervention of this Court. It is also contended that since police officials were involved, they are being shielded by filing the aforesaid untraced

report. However, there is no basis for the contention that Jai Pal had been killed at the Petrol Pump or anywhere else and if so, by the police officials or Petrol Pump employees or Ram Parshad and his companions or all of them. The contention that Satyan might have been pressurized to affirm the aforesaid affidavit because of the involvement of the police officials is hypothetical and imaginary as there is no material on record to substantiate the same. There is not even an allegation to this effect that Satyan was pressurized to affirm the aforesaid affidavit. Moreover, it is not explained as to who provided information to the petitioner regarding allegations made in the FIR lodged by the petitioner. No affidavit or statement of any such person has been placed on record to substantiate the said allegations whereas the petitioner himself admittedly had no personal knowledge thereof.

This Court has all the sympathy with the petitioner, who is unfortunate father of Jai Pal @ Karmu who is not traceable. However, without there being anything whatsoever, nobody can be hanged for the alleged killing of the petitioner's son, particularly when there is not even any material to even remotely suggest that Jai Pal @ Karmu has died or is still alive. Investigation has been conducted by Gazetted Officer of the rank of Deputy Superintendent of Police belonging to State Crime Branch. In these circumstances, entrustment of the investigation to Central Bureau of Investigation would be an exercise in futility. Nothing can be said against the Deputy Superintendent of Police, who has conducted the investigation except that he is a Police Officer and there are allegations by the petitioner against some junior rank police officials. However, merely on this ground, the report submitted by the Deputy Superintendent of Police cannot be discarded. It has to be highlighted at the risk of repetition that till date, the petitioner has not even placed on record any affidavit or other

document by Cleaner Satyan or by anybody else in support of the allegations made in the FIR or in the instant petition whereas the petitioner himself has no personal knowledge.

In view of the aforesaid, I find that no case for entrusting the investigation of the above mentioned FIR to Central Bureau of Investigation is made out. The petition is accordingly dismissed. However, nothing observed herein shall be construed to be an expression of opinion on the merits of the case and if the petitioner is able to procure some material, he shall be at liberty to pursue his remedies.

October 11, 2007 **(L.N.MITTAL)**
monika **JUDGE**